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12/11/03

In re Application of  
DALLE CARBONARE, et al.  
Application No.: 10/019,387  
PCT No.: PCT/EP00/06087  
Int. Filing Date: 29 June 2000  
Priority Date: 29 June 1999  
Attorney Docket No.: ~~2039-0156P~~ 259-411P  
For: USE OF HYALURONIC ACID  
DERIVATIVES IN PHARMACEUTICAL  
PREPARATIONS AND BIOMATERIALS  
FOR THE PREVENTION AND  
TREATMENT OF CUTANEOUS SCARS

DECISION ON PETITION

UNDER 37 CFR 1.181

This decision is in response to applicant's "Petition to Withdraw Abandonment Since Reply Was Timely Filed" filed in the United States Patent and Trademark Office (USPTO) on 27 August 2003 and again on 23 October 2003. The response is being treated as a petition under 37 CFR 1.181. No petition fee is due.

### BACKGROUND

On 29 June 2000, applicant filed international application PCT/EP00/06087 which claimed priority to an application filed 29 June 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 04 January 2001. A Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 29 December 2001.

On 28 December 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*: the requisite basic national fee as required by 35 U.S.C. 371(c)(1) and a First preliminary amendment.

On 12 February 2002, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide a signed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a)

and (b), identifying the application by the International application number and international filing date. Applicant was provided two months to file the proper response and advised that this time could be extended pursuant to 37 CFR 1.136(a).

On 16 March 2003, applicant was mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) for failure to respond to the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) mailed 12 February 2002 within the time period set therein.

On 27 August 2003, applicant responded with the present petition. The petition was re-filed on 23 October 2003.

### **DISCUSSION**

The best evidence of what was actually received by the Office is a postcard receipt containing a specific itemization of all the items being submitted. See MPEP 503. Here, applicant has provided a copy of the date-stamped postcard receipt. The postcard identifies the application by applicant, application number and docket number. Among the items listed on the receipt is "Completion of Filing Requirements, PCT/DO/EO/905 and Executed Declaration." The receipt is stamped "JC05 Rec'd PTO/PCT 26 MAR 2002." Thus, it is clear that applicant filed an executed combined declaration and power of attorney on 26 March 2002. For the reasons stated above, it is proper to grant applicant's petition at this time and accept the copy of the combined declaration and power of attorney filed 27 August 2003 as a substitute for the combined declaration and power of attorney originally filed 26 March 2001. Further, a review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have now been satisfied.

### **CONCLUSION**

For the reasons above, the petition under 37 CFR 1.181 is **GRANTED**.

The "NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909)" mailed on 16 March 2003 is hereby **VACATED**.

The application has an international filing date of **29 June 2000** under 35 U.S.C. 363 and will be given a date of **26 March 2002** under 35 U.S.C. 371(c).

Application No.: 10/019,387

3

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision.

A handwritten signature in black ink, appearing to read "Derek A. Putonen". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

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